

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

MARCOS COPLIN-BRATINI

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

CIVIL NO. 98-2308 (DRD)
Criminal No. 95-284-2 (DRD)

Request for Certificate of Appealability

RECEIVED AND FILED
00 JUN 26 AM 9:14

CLERK'S OFFICE
U.S. DISTRICT COURT
SAN JUAN, P.R.

ORDER

Petitioner's Section 2255 Motion was denied on April 20, 2000, judgment being entered accordingly. (Docket Nos. 15-16). Notice of Appeal was timely filed on May 1, 2000. (Docket No. 17). Petitioner's notice of appeal also requests issuance of a certificate of appealability (COA).

Under the provisions of 28 U.S.C. § 2253, petitioner must be granted a certificate of appealability in order to proceed with the appeal. A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

In Smith v. United States, 989 F. Supp. 371, 373-74 (D. Mass. 1997), the district court framed the required standard:

Several circuits have considered this issue by asking whether the standard for the issuance of a certificate of appealability is the same as the standard for the issuance of a certificate of probable cause. The majority have concluded that the standard is the same, except that in granting a certificate of appealability a court is now required to indicate which specific issue or issues satisfy the threshold showing.

In Barefoot v. Estelle, the Supreme Court stated that a "certificate of probable cause requires petitioner to make a 'substantial showing of the denial of [a] federal right' ... [by demonstrating] that the issues are debatable among jurists of reason;

Appeal's Note

19

CIVIL NO. 98-2308(DRD)
Criminal No. 95-284-2(DRD)

Page -2-

that a court could resolve the issues in a different manner; or that the questions 'are adequate to deserve encouragement to proceed further.'"

(citations omitted).

For the reasons set forth in the Magistrate's Report and Recommendation of March 16, 2000 (Docket No. 13) which was adopted by the Court on April 20, 2000 (Docket No. 15), we find that petitioner has not made a substantial showing of the denial of a constitutional right.

WHEREFORE, a certificate of appealability should not issue in this action.

Petitioner is advised that Local Rule 22.1(a) of the United States Court of Appeals for the First Circuit states that "the procedure set forth in Fed. R. App. P. 22(b) shall apply to requests for certificates of appealability in actions under ... 28 U.S.C. § 2255."

This Court having denied the application for issuance of a certificate of appealability, a request for a certificate of appealability should now be filed promptly before the Court of Appeals. The application before the Court of Appeals shall be "accompanied by a copy of the district court's order and a memorandum giving specific and substantial reasons, and not mere generalizations, why a certificate should be granted ... If no sufficient memorandum has been filed by that time, the certificate may be denied without further consideration. The effect of a denial is to terminate the appeal." Loc. R. 22.1(c) (emphasis supplied).

IT IS SO ORDERED.

In San Juan, Puerto Rico, this 22nd day of June, 2000.



DANIEL R. DOMINGUEZ
U.S. DISTRICT JUDGE